HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No. 19153 of 2007

Date: 13.11.2007

Between:

Syed Rasheedullah Hussaini

… Petitioner

and

The Government of India,
Ministry of Home Affairs,
Rep. by its Secretary, New Delhi & another

… Respondents

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O R D E R:

This Court ordered notice before admission on 10.09.2007.

2. The writ petition is filed for a writ of mandamus declaring the action of the second respondent in not correcting the date of birth in the passport of the petitioner as arbitrary, illegal and unjust and consequently direct the second respondent to correct the date of birth of the petitioner in the passport as 7th December 1979 instead of 1st April 1976 and to pass such order or orders as deem fit and proper in the circumstances of the case.

3. It is stated that the petitioner was born on 7th December 1979, that in SSC certificate also, his date of birth was mentioned as 7th December 1979, that in 1997, he has submitted an application to the second respondent for issue of a passport, wherein, by oversight, he mentioned the date of birth as 1st April 1976 and that the second respondent issued the passport by entering the date of birth as such. It is further submitted that in the process of searching jobs in abroad, the petitioner noticed that his date of birth was wrongly entered in the passport, that he approached the second respondent on 22.08.2007 along with the SSC certificate requesting him to rectify the mistake, but the latter refused to do the same stating that he is not competent authority. It is also stated that on enquiry, the petitioner came to know that Ministry of External Affairs, Government of India has issued circular instructions/clarifications dated 18.04.2001 pursuant to the verdict of the High Court of Judicature at Bombay in Civil Writ Petition No. 1072 of 2000. It is further stated that this Court also disposed of similar Writ Petition No. 19290 of 2003 on 12.09.2003, wherein it has been observed that ‘under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries

in the passport. However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e. school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court'. In such circumstances, the writ petitioner approached this Court praying for the relief specified supra.

4. The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs
(PV-I Section)
Circular

___/401/2/5/2001 *18th April, 2001*

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b)Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court

Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

5. In ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad*** [1] it was held :

*" I n **Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,** I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b)Where a competent authority issuing a birth certificate or an educational board registering a date of birth along

with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali Imran***

(referred above) *this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."*

6. This Court again in **Durgempudi Venkata Raghava Vs. Pass Port Officer, Ministry of External Affairs, Passport Office, Hyderabad** [2] observed at paras 9 to 14 as hereunder :

"*Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004, was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.*

It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18-4-2001. As can be seen from the material available on record, the certificates which had been produced before this Court, it is clear that it is only a bona fide mistake which had crept in.

Apart from this aspect of the matter, no counter affidavit had been filed denying the specific averment made in the affidavit filed in support of the Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the

passport was issued prior to the said circular it would be proper to give an opportunity to the writ petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18-4-2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a bona fide mistake had crept in, the Writ Petition is disposed of with the following directions.

The petitioner shall file fresh application enclosing all the copies of certificates, which are being relied upon by him, before the respondent within a period of one month from today and the respondent is directed to take into consideration of the certificates and after verifying the same, pass appropriate orders in this regard within a period of one month thereafter..."

7. In the light of the Circular and also in the light of the decisions referred to supra, the action of the second respondent cannot be said to be justified. In view of the same, the writ petition is disposed of directing the second respondent to receive the application of the petitioner along with necessary documents, if any enclosed and dispose of the same in accordance with law in the light of the Circular and the decisions specified supra, within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

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P.S. Narayana, J

Date : 13-11-2007

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[1] **2005(1) ALT 95**

[2] **2005(1) ALT 751**